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**Issue Date: 02 June 2003**

**CASE NO.: 2002-LHC-792**

**OWCP NO.: 2-116652**

**IN THE MATTER OF**

**LARRY L. PASCARETTI**  
**Claimant**

**v.**

**GENERAL DYNAMICS LAND SYSTEMS**  
**Employer**

**TRAVELERS INSURANCE COMPANY**  
**Carrier**

**Appearances:**

Gary B. Pitts, Esq.  
For the Claimant

William C. Cruse, Esq.  
For the Employer

**BEFORE: C. RICHARD AVERY**  
**Administrative Law Judge**

**DECISION AND ORDER CONCERNING**  
**SECTION 7 MEDICAL EXPENSES**

## Background

A Decision and Order issued in this claim on April 18, 2001. (CX 1). In that decision, I determined Claimant's condition was related to his overseas employment during the Gulf War. While no compensation was awarded because Claimant's then wages were in excess of his pre-injury wages, I did award all reasonable and necessary medical expenses related to his condition, including the then expenses associated with treatment provided by Drs. White, Yee, Hyman, Rea and Didriksen.

A dispute has now arisen as to the reasonableness and necessity of certain new and additional medical expenses claimed by Claimant. A hearing was held concerning these issues on January 31, 2003, at which time the parties were represented by counsel, presented evidence and subsequently, by deadline of May 23, 2003, filed post-trial briefs. This decision is based on the entire record.

In his claim, Claimant seeks recovery or approval for seven categories of expense items for which he has incurred or wishes to incur their costs as reasonable and necessary medical expenses prescribed by his treating physician, Dr. William Rea: (1) air filters; (2) conversion of his garage to a toxic free sleeping room; (3) conversion of his family room from forced air natural gas heat to a sealed gas fire place; (4) cost of an organic diet and water; (5) installation of a sauna; (6) conversion of his entire house to a less toxic environment; and (7) reimbursement for syringes and alcohol used for vaccine.<sup>1</sup>

In requesting these items, Claimant acknowledges that Gulf War Illness is a multi-symptom neurological disorder which enjoys no recognized effective treatment, but he urges that Dr. Rea's treatment is part of a variety of methods being experimented with to improve Gulf War veterans, and "the benefit of the doubt should be given Mr. Pascaretti . . . and his treating specialist." Employer/Carrier, on the other hand, have come forward with experts of equal if not greater standing who see no merit in the

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<sup>1</sup> Initially, Claimant sought disability benefits for a 14 day period in 2001 while he participated in treatment with Dr. William Rea; however, that claim has now been withdrawn by Claimant in his post-hearing brief. Also, as to the issue of a \$100 bill paid by Claimant for an Employer/Carrier referred independent medical examination, in their post-hearing brief Employer/Carrier acknowledged responsibility for this indebtedness with Tulane University Group and agreed to reimburse Claimant.

proposed expenses. Consequently, Employer/Carrier urge that the treatment and home modifications recommended by Dr. Rea, and sought by Claimant, are neither reasonable, necessary nor accepted by the scientific community. Employer/Carrier also points out that as to the air filters, sauna, some organic foods and renovation of space above his garage, Claimant has purchased these items and/or incurred these expenses without notifying or seeking approval of the Employer/Carrier.

### Medical Opinions

Since the first hearing, Dr. William Rea of the Environmental Health Center in Dallas, Texas, has remained Claimant's treating physician. Claimant has seen Dr. Rea on three occasions and undergone "numerous tests." Claimant feels the treatment he has received and the items purchased, such as the air filter and sauna, have "improved" him both mentally and physically. While he has no written prescriptions for any of these items in question, Claimant said he bought the air filters, sauna, mask respirator, and renovated the sleeping area above his garage at his own expense. The other items in question he has provided estimates of their costs.

Dr. William Rea's telephonic deposition was taken January 24, 2003, and can be found at Employer's Exhibit 14. He testified that Claimant's primary diagnosis remains Toxic Encephalopathy which causes cognitive dysfunction. While Claimant's prognosis is "guarded," Dr. Rea opined that he thought "he is probably going to be okay" and function fully so long as he has minimum exposure to toxins.

As to the filters and mask, Dr. Rea offered that they were recommended to screen out fumes and ambient pollutants to take the "load off of the immune system" and the "detoxification system." Likewise, he testified that the suggested conversion of a sleep room in Claimant's garage was proposed to achieve the same purpose. The same was true with the conversion of the family room, organic diet and spring water, in-house sauna, exercise and massage therapy.

Dr. Rea explained while any toxins Claimant might have been exposed to during the Gulf War were probably metabolized by now, the purpose of detoxification is because some possibly might be "stored" in Claimant's internal organs. As far as the prescription for oxygen, this was not prescribed for respiratory insufficiency, but rather for "extraction insufficiency." The vaccine provided, and for which Claimant uses the syringes, is prepared by Dr. Rea from other Gulf War victims and has been "reasonably

successful” for a lot of people in neutralizing the microblasma. The antigen is designed to create an antibody response which can aid in desensitizing a person.

Dr. Rea estimated that he has treated over 90 patients with Claimant’s symptoms and has met with 80 to 85 percent success in reduction of symptoms. However, while he expressed hope they will be curative in Claimant’s instance, he agreed his prescribed therapies and treatments cannot be predicted in every patient.

Nancy Didriksen, PhD, is a psychologist who by report dated September 19, 2001, provided her opinion that Claimant suffers Toxic Encephalopathy whose reversibility is “uncertain without appropriate treatment and avoidance of toxin/neurotoxic substances.” (CX 3).

Dr. Manual Lopez of the Tulane University School of Medicine reviewed the opinions of Drs. Rea and Didriksen and offered his opinion. (EX 1). Dr. Lopez is within the immunology, allergy and rheumatology section of the center. As to Dr. Rea’s treatment, he stated “none of the therapies were recognized by the medical community as scientifically valid for the treatment of any medical condition that can be contributed to the work environment in Saudi Arabia. The vaccine provided Claimant has not been approved by the Food and Drug Administration, and the other treatment proposed by Dr. Rea is highly experimental and inappropriate and unnecessary.”

Dr. Davis is a board certified medical doctor who, as an employee of the Department of Veterans Affairs, has treated over 200 veterans with illnesses following their service in the Gulf War. He reviewed Claimant’s medical records, and his report is Employer’s Exhibit 9. Dr. Davis characterizes himself as well acquainted with the Gulf War Syndrome and its manifestations and disabilities.

Dr. Davis agrees that Claimant does indeed suffer Gulf War Syndrome, but he believes Dr. Rea’s treatment is “scientifically erroneous” and not in the Claimant’s best interest. Detoxification is Dr. Rea’s primary treatment goal, but has not been proven a successful approach, and in Dr. Davis’ opinion it could be psychologically harmful by placing too much emphasis on Claimant’s symptomatology and lifestyle. There are no valid studies to support Dr. Rea’s vaccine. Dr. Davis found no benefit in oxygen therapy or the use of a private sauna, since toxins are most likely detoxified by the liver, kidneys or digestive system - not sweating. As to Claimant’s multiple chemical sensitivity syndrome, though not proven, Dr. Davis believes cleaning of Claimant’s

house rather than mass modification would be the responsible approach. He sees no gain in an organic diet. In summary, Dr. Davis writes:

In conclusion, I respect Dr. Rea's attempts at experimental treatment of veterans, but I feel that his proposals do not really address the issue of Persian Gulf Syndrome, are experimental, and many of his suggestions are rather costly and probably not overly efficacious, and thus I myself would not consider them reasonable for his care.

I think Mr. Pascaretti is entitled to ongoing medical care for his problems in whatever form ongoing medical care is provided realistically through the office of Workers Compensation programs, but again suggest that some effort be made by OWCP to see whether or not Mr. Pascaretti could be eligible for care as a Persian Gulf exposed worker at the Department of Veteran Affairs. I hope this has answered a number of questions that have been posed regarding the treatment modalities proposed in the care of Mr. Pascaretti. (EX 9).

Dr. John McLeod Griffiss is board certified in internal medicine and infectious diseases. He was a medical officer in the Gulf War and has cared for more than 150 veterans of the Gulf War who have multiple symptom disorders. He has also directed two studies involving over 2000 veterans from that war who suffer illnesses. Dr. Griffiss reviewed Claimant's medical records and his opinion is Employer's Exhibit 11. He finds Claimant's symptoms typical of the Gulf War Illness. Categorically, Dr. Griffiss states that Gulf War Illness is not a continuing allergic disorder nor caused by continuing presence of toxins in the body. Cleansing of ones body or environment has not been shown to be effective treatment. To treat in such a manner only increases a persons disability by requiring the person to obsessively focus on his/her environment. Neither, Dr. Griffiss believes, will the therapy vaccine suggested by Dr. Rea be of benefit, nor is the vaccine approved. If Claimant is improving, Dr. Griffiss opines it "is not a consequence of his treatment by Dr. Rea, but the natural progress of this illness."

### Findings of Fact and Conclusions of Law

In my Decision and Order of April 18, 2001, I provided that pursuant to Section 7 of the Act Employer/Carrier were responsible for all reasonable and necessary medical expenses incurred by Claimant regarding his work-related condition, including expenses associated with Drs. Rea and Didriksen. Armed with that Order, obviously Claimant has continued to see Dr. Rea on at least three occasions, and as to some of Dr. Rea's suggestions has followed his advice without notifying and/or seeking approval of Employer/Carrier. Obviously, the question becomes are these expenses reasonable, necessary and appropriate for Claimant's treatment? From the evidence presented, I find that at least some have not been shown to be reliable or effective, and thus I find Employer/Carrier are not in violation of my previous order for refusing to pay for such items.

Section 7(a) provides that employer must furnish "medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. §907(a). In order for a medical expense to be assessed against the employer, the expense must be both reasonable and necessary. There appears to be no presumption to assist Claimant in this regard, and consequently, the burden of proving the elements of his claim for medical benefits remains with the Claimant.<sup>2</sup>

In this instance, five of the seven expense items for which Claimant either seeks recovery or approval involve modification and/or improvement of his home in order to create a more toxic free environment. While the Board has approved as "apparatus" modifications of a Claimant's home necessitated by his work injury, here I do not find from the evidence that these are reasonable and necessary covered expenses.<sup>3</sup>

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<sup>2</sup> The Supreme Court has held that the "true doubt" rule, which resolves conflicts in favor of the claimant when the evidence is balanced, violates §556(d) of the Administrative Procedures Act. *Director, OWCP v. Greenwich Collieries*, 114 S.Ct. 2251, 28 BRBS 43 (1994).

<sup>3</sup> See *Dupre v. Cape Romain Contractors*, 23 BRBS 86, 94 (1989).

Obviously, Dr. Rea's recommendations are by and large aimed at detoxification either by changes in Claimant's environment or elimination of toxins in Claimant's body. However, Drs. Lopez, Davis and Griffiss opined that this was not a reasonable approach because Gulf War Illness Syndrome is neither a continuing allergic disorder nor caused by toxins in one's body and also because such focus on Claimant's environment could possibly lead to more psychological dysfunction. In other words, according to these doctors an effort to cleanse the environment has not been shown to be an effective or reliable method of treatment.

By Dr. Rea's and Claimant's own admissions, the approach of modifying Claimant's home is an experimental effort to treat Claimant's increased sensitivity to certain exposures in the environment. This elaborate and costly approach,<sup>4</sup> however, is not recognized in the medical community nor found rational by either Drs. Lopez, Davis or Griffiss, the latter two of whom both appear to have far more experience with veterans suffering from Gulf War Illness than Dr. Rea. In fact, both Drs. Davis and Griffiss were unequivocal that such an approach to Claimant's symptoms could, if anything, be counter productive.

Certainly, Claimant is at liberty to pursue the remedies he perceives helpful and in which he has the greatest confidence; however, from the evidence presented I find that Employer/Carrier should not be responsible for this experimental approach of creating a toxic free lifestyle which has not been proven to be effective, reasonable or necessary. Consequently, as to Claimant's request for modification or enhancement of his dwelling, I find these are not reasonable and necessary medical expenses which fall within Employer/Carrier's responsibility under Section 7 of the Act.

As to Dr. Rea's recommendation that Claimant consume only organic food and spring water, he did not elaborate on this suggestion in his deposition, but in his report Dr. Davis stated such consumption has never been shown as a benefit. Consequently, I find these items to have not been shown to be reasonable and necessary expenses under §7 of the Act.

Regarding Dr. Rea's hands on medical treatment, however, I make a different finding. Despite the fact the vaccine administered by Dr. Rea has not been approved by the Food and Drug Administration it is the medical treatment provided by Dr. Rea

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<sup>4</sup> Costs for these five categories are approximately \$35,000.00.

who is Claimant's choice of physician and under whose care he apparently intends to remain. Consequently, as to the vaccine, antigen therapy, oral and intravenous vitamins and minerals, and oxygen therapy, as well as the syringes used to administer at least some of this therapy, I find the same to be Employer/Carrier's responsibility as reasonable and necessary medical treatment provided by Claimant's physician. While neither Drs. Davis nor Griffiss were inclined to prescribe such treatment, still I view it as medical "treatment" provided by a licensed physician, unlike the expensive and experimental modifications recommended for Claimant's dwelling and lifestyle.

### ORDER

1. Employer/Carrier shall remain liable for Claimant's reasonable and necessary Section 7 medical expenses arising out of his work related condition, including Gulf War vaccine and syringes and alcohol, oxygen therapy, antigen therapy, and oral and intravenous vitamins and minerals. The remainder of the expense items sought by Claimant, however, are DENIED;

2. Employer/Carrier shall reimburse Claimant for the \$100.00 paid to Tulane University Medical Group;

3. Claimant's counsel shall have twenty days from receipt of this Order in which to file a fully supported attorney fee petition and simultaneously to serve a copy on opposing counsel. Thereafter, Employer shall have ten (10) days from receipt of the fee petition in which to file a response; and

4. All computations of benefits and other calculations which may be provided for in this ORDER are subject to verification and adjustment by the District Director.

So ORDERED this 2<sup>nd</sup> day of June, 2003, at Metairie, Louisiana.

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C. RICHARD AVERY  
Administrative Law Judge

CRA:kw